

DISCUSSION KICK-OFF

Human rights and the international protection of biodiversity – A promising alliance (Part II)

ROMY KLIMKE — 8 June, 2018



The first part of this post established the intrinsic connection between human rights and the protection of biodiversity, looked at human rights and the environment in international public law in general and examined the conceptual relationship between biodiversity and the environment. The second part centers around the current approach of the UN Special Rapporteur on Human Rights and the Environment which promises nothing less than a change of paradigm on biodiversity and human rights.

The contribution of the UN Special Rapporteur on Human Rights and the Environment

So far, the relationship between biodiversity and human rights has been little acknowledged, even within the environmental approaches to human rights. However, the issue has gained new momentum since the appointment of John Knox, Professor of Public International Law at Wake Forest University, as UN Special Rapporteur on Human Rights and the Environment in 2012. Pursuant to [Human Rights Council Resolution 28/11](#), Knox produced a detailed analysis on the relationship between human rights and biodiversity. In preparation for the report, he had sent a questionnaire to States and other stakeholders and [received feedback from over 60 responders](#). Additionally, more than 30 experts from international institutions, research facilities, and civil society contributed to the drafting process. Knox presented the report on human rights and biodiversity ([A/HRC/34/49](#)) at the 34th session of the UN Human Rights Council. In his report, Knox argues that nothing less than “[t]he full enjoyment of human rights ... depends on biodiversity, and the degradation and loss of biodiversity undermine the ability of human beings to enjoy their human rights” (para. 5). According to his findings, biodiversity is necessary for ecosystem services which support the full enjoyment of a wide range of human rights, including the rights to life, health, food, water, an adequate standard of living, culture and non-discrimination (para. 11ff.). Moreover, the classic human rights obligations (respect – protect – fulfil) are directly applicable to biodiversity-related actions. States have a general obligation to protect biodiversity and ecosystems in order to protect human rights, including the obligation to protect against environmental harm from private actors as well as government agencies (para. 33, 69 lit. a). States should also support indigenous and local efforts to protect biodiversity, “recognizing that the traditional knowledge and commitment of indigenous peoples and local communities

often make them uniquely qualified to do so” (para. 71). In addition, States are obliged to provide for the participation of citizens in biodiversity-related decisions and processes and to provide access to effective remedies in cases of diminishing biodiversity and degradation (paras. 27ff., 67). Apart from states, Knox emphasizes the responsibility of

businesses “to respect human rights in their biodiversity-related actions” as well, including by complying with the [UN Guiding Principles on Business and Human Rights](#), following the [Akwé: Kon Voluntary Guidelines](#), implementing the recommendations of the Special Rapporteur on the rights of indigenous peoples with respect to extractive activities (A/HRC/24/41), as well as not seeking or exploiting concessions for exploitation of natural resources in protected areas (para. 33, 72). In accordance with the vital groundwork of the UN Special Representative on business & human rights, John Ruggie, Knox rightly includes businesses into the circle of relevant actors who are responsible for the full enjoyment of human rights in relation to biodiversity. Whenever business activities endanger species that are essential for the well-being of a certain group or humankind in general, the responsible businesses should be directly accountable under human rights law. The report also underlines some of the advantages of a human rights perspective on biodiversity: it “(a) Helps to clarify that the loss of biodiversity also undermines the full enjoyment of human rights; (b) Heightens the urgent need to protect biodiversity; (c) Helps to promote policy coherence and legitimacy in the conservation and sustainable use of biodiversity” (Rdn. 66). In addition, the UN Special Rapporteur uses the opportunity to shed some light on the obscure terminological relationship between the environment and biological diversity. Starting with his preliminary report in 2012 (A/HRC/22/43, para. 8), Knox has stressed repeatedly that the conservation of biodiversity forms an integral part of the international environmental challenges, next to transportation and disposal of hazardous substances, marine pollution, depletion of the ozone layer and climate change. In his report on biodiversity and human rights, he elaborates further on the complex relation between the environment and biodiversity. By referring to the [Millennium Ecosystem Assessment](#), he explains that a healthy environment is merely a transcription for the multitude of services that ecosystems provide, such as water, food, disease management, climate regulation and aesthetic enjoyment. In turn, stability and productivity of a particular ecosystem depend upon its biological diversity. The more diverse ecosystems are, the more resilient to sudden disasters and long-term threats such as climate change they will be (para. 10). Thus, from a human rights perspective, one might conclude that the right to a healthy environment must inevitably extend to the protection of biodiversity as it is the basis to which all human well-being is linked. On March 24, 2017, the HRC endorsed the Report and requested states to make every effort possible to minimize damage to ecosystems and biodiversity in order to respect, protect, and fulfil human rights obligations (A/HRC/RES/34/20).

Critical appraisal

The UN Special Rapporteur made it perfectly clear: Biodiversity is not a conflicting or negligible factor for human well-being, but a vital component of the human right to a healthy environment. The question remains, however, how a human rights perspective can in turn specifically advance the protection of biodiversity. To quote George Sand: “The truth is too simple: one must always get there by a complicated route”. This somewhat seems to be the case with biodiversity and the previous attempts to protect it. Even though the man-made threats to species around the world have been well-known for decades, they have not gathered enough attention to prompt adequate responses from states. The CBD-secretariat concluded in a [2010 report](#) that virtually none of the targets set out by the convention had been met. Even though the CBD enjoys practically universal ratification, it could not persuade states to fulfil a single one of their obligations. In light of these worrying developments, it simply seems genius to make biodiversity a human rights issue. An anthropocentric approach to biodiversity that puts human interests at the heart of the issue shows in fact great potential to bring about real change. A human rights perspective offers many benefits, some of which have already been pointed out in Knox’ report. Most importantly, one might add, a human rights-based approach promotes the rule of law as it helps to identify rights holders and corresponding duty-bearers and to strengthen legal capacities. Moreover, if a state is not willing to fulfil its human rights obligations with regard to the protection of biodiversity,

individuals may bring a case to the international human rights supervisory bodies, thus putting additional pressure on the state to comply with its duties under international biodiversity law. However, it appears that Knox' approach will only benefit the protection of biodiversity insofar as a specific connection to human well-being can be determined. His argument loses a great deal of its persuasiveness when it comes to the protection of species whose purpose for mankind is not immediately obvious or quantifiable. Knox himself illustrates this weakness, albeit probably unintentionally, with the example of the Bramble Cay melomys (para. 38). The melomys were the only mammals endemic to the Great Barrier Reef, before they became extinct in 2016. The implications of losses like this for human well-being, Knox admits, may be less concrete than others. Nonetheless, "many people find the species with which we share this planet fascinating and inherently valuable, and they feel a sense of loss when they learn of the extinction of species". At this point, the assumption of an intrinsic connection of human rights and biodiversity becomes arguably far-fetched as the only potential legal interest at stake would be the emotional state of people. After all, there is no human right against the feeling of loss. In order to anyhow emphasize the dependence of human rights upon biodiversity, Knox takes recourse to the concept of the common concern of humankind (para. 39) – a concept particularly attributed to environmental law whose origins can be traced back as far as to the 1950s. However, that an issue might raise the common concern of humankind does not necessarily imply a potential infringement on human rights. Although the respect for human rights has been recognized as a common concern of humankind, not every common concern of humankind is a human rights issue. Furthermore, the exact consequences of the extinction of a certain species are difficult to predict. Considering the enormous complexity of the inner workings of ecosystems, the loss of any organisms could cause unforeseen failures. In addition, I argue that the anthropocentric character of human rights law should not supersede the fundamental concept of international biodiversity law that species deserve protection in and of themselves. Albeit every living organism is worthy of protection for its own sake, it may not always be possible to link its fate to human well-being. Knox seems to be aware of this shortcoming of the anthropocentric approach, as he himself emphasizes in his report that the current international biodiversity law already lays down all the "steps necessary to conserve and sustainably use biodiversity" (para. 39). The problem of the biodiversity law regime is its lack of implementation. This is where human rights law should come into play. As a complementary approach to the existing legal framework on the protection of species, human rights law certainly has the potential to finally attract the international attention that the protection of biodiversity has been deserving all along.

Outlook: Toward an international right to a healthy environment?

The alliance of human rights and international biodiversity law is a process that has only just started. It remains to be seen how this relationship will develop within the years to come. Already, in March 2018, Knox has taken another important step in his quest to halt biodiversity loss with the shield of human rights law: On the occasion of the presentation of the UN Framework Principles on Human Rights and the Environment, he called upon the international community to finally recognize the right to a healthy environment in a global instrument. In accordance with Knox' comprehension of the environment, such a right would necessarily include biodiversity. As the planet is heading towards its sixth mass extinction event, such a global commitment could amount to a powerful statement that worldwide threats to various species are essentially a threat to human well-being itself.

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